

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4454 OF 1986

with

SPECIAL CIVIL APPLICATION NO. 4555 OF 1993

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- 
1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

-----

UTTAR BHARTIYA NAGAR COOPERATIVE HOUSING SOCIETY LTD. &  
ANR.  
VERSUS  
THE STATE OF GUJARAT & ORS.

-----

Appearance:

(In SCA No.4454/86)  
MR SK JHAVERI for Petitioners  
MR SK PATEL for Respondents 1,2,3  
MR JAYANT PATEL for Respondents No.4,5

(In SCA No.4555/93)

MR SM SHAH for Petitioners

MR JAYANT PATEL for Respondent No.1

MR SK PATEL for Respondents No.,2,3,4

-----  
Coram: MR.JUSTICE S.K. Keshote,J

Date of decision:30/12/1999

C.A.V. JUDGMENT

#. The Division Bench of the Madhya Pradesh High Court, in the case of Kamta Prasad v. Registrar, Cooperative Societies, reported in AIR 1967 MP PAGE 211, observed:

9. .... The Cooperative movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged in the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great Cooperative movement. Such being the nature of the Cooperative movement, there is no place in any Cooperative Society for any member who is not honest and who, as the Allahabad High Court observed in regard to the applicant, is a 'liar', 'trickster' and inclined to give false evidence. It is clearly in the interest of the Society that such a member should be expelled therefrom. In our opinion, having regard to the observations of the Allahabad High Court in regard to the petitioner, the Registrar rightly acted under rule 18(2) in expelling him from the various Cooperative Societies of which he was a member"

#. The basic principles of cooperation are that the members join as human beings and not as capitalists. The Cooperative Society is form of organization wherein persons associate together as human beings on the basis of equality for promotion of economic interest of its members. This movement is a method of doing the business or other activities with ethical base. "Each for all and

all for each" is the motto of the cooperation movement. This movement not only develops latent business capacities of its members but produces leaders; encourages economic and social virtues, honesty and loyalty, becomes imperative, prospects of better life, obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gains for himself. So in fact, it being a business cum moral movement, and the success of the Cooperative Society depends upon the reality with which one of the members work for the achievement of its objects and purpose. The Committee on Cooperation in India emphasized the moral aspect of cooperation, to quote the words,

The theory of co-operation is very briefly that an isolated and powerless individual can, by association, with others and by moral development support, obtain in his own degree the material advantages available to wealthy or powerful persons and thereby develop himself to the fullest extent of his natural abilities. By the Union of forces, material advancement is secured and by united action self reliance is fostered and it from the inter-action of these influences that it is hoped to attain the effective realisation of the higher and more prosperous standard of life which has been characterised as better business, better arming and better living; we have found that there is a tendency not only among the outside public but also among supporters of the movement to be little its moral aspect and to regard this as superfluous idealism.

Cooperation in actual practice must often fall short of the standard aimed at and details inconsistent with co-operative ideals have often to be accepted in the hope that they may lead to better things. We wish clearly to express that it is the true co-operation alone, that is, to a co-operation which recognises the moral aspect of the question that Government must look for the amelioration of the masses and not to a pseudo co-operative edifice, however imposing, which is built in ignorance of co-operative principles. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets honesty and a sense of moral obligation and keeps in view the moral rather than the material

sanction. Pages 5 and 6 of Theory and Practice of Co-operation in India and Abroad by Kulkarni, Volume 1. Co-operation is a mode of doing business, is at present applied as the solution of many economic problems. Co-operation is harnessed to almost all forms of economic activity. Though co-operation was introduced in this country as a remedy for rural indebtedness, it has been applied successfully in a wide range of activities such as production, distribution, banking, supply, marketing, housing and insurance. See Theory and Practice of Co-operation in India and Abroad by Kulkarni Volume 1 Page 2.

Though cooperation was introduced in this country as a remedy for rural indebtedness, it has been able to successfully widen range of activities such as production, distribution, banking, civil supplies, marketing, housing and insurance. This movement had got momentum and in the fields aforesaid, it is no doubt working throughout the nation. The aim, object and purpose of this Cooperative movement now to certain extent turns out as if it is to provide platform to the ambitious persons to have their political gains or some other gains. To certain extent, if we go by the facts of this case, then cooperation movement in housing has, by and large, become a business and that is the reason that whosoever have been elected as the office bearer of such Cooperative societies, are making all the efforts to keep control over it once for all. This character of the members of such Society in fact gives out that the sole consideration now is not of ethical and equity for promotion of economic interest of each member but interest and promotion of economic interest of the office bearers in the Cooperative societies.

#. These two cases are clearly exhibiting how the persons who promote Cooperative Housing Society for providing houses to its members have made all the attempts to keep control over the Society. This approach of the petitioners in this case is not ethical nor it is providing equality in promotion of economic condition of the members of the Society. Not only this, foremost requirement in the Society to have democratic setup therein an attempt has been made by petitioners to act contrary to what the Society has accepted to act.

#. Not only this, the petitioner has not come with clean hands before this court and though throughout the proceedings it was not his case that the papers,

documents and other record of the Society is not with him a somersault has been taken and an argument has been advanced in these proceedings that the record of the Society was not with him.

#. As both these petitions have been filed by one person and proceed on the same facts and grounds, though two different orders of the authority, under the Cooperative Societies Act, 1960, are under challenge therein and the learned counsel for the petitioners and respondents have also said that these matters may be heard together and this court has also ordered for hearing these two matters together the same are being taken for hearing together and are being disposed of by this common order.

#. The petitioner has not only acted contrary to the object and purpose for which this Cooperative housing Society has been constituted and registered under the provisions of the Cooperative Societies Act, 1961, but as a result of his acting in the aforesaid manner, it is resulting in manifold litigations before the civil court, this court and Nominees of the Registrar of the Cooperative Societies and the State Government. When the petitioner has failed to get his place in the management of the Society and also in the civil court to get injunction, he has to give the record of the Society to the office bearers of the Society. Not only this, when the authority, the District Registrar, Cooperative Societies, Ahmedabad, passed the order against him, instead of complying with that order, he has challenged that order before the higher authorities and ultimately in this court. The petitioner was in possession of the record of the Society on which there cannot be raised any dispute though now his counsel is making a statement contrary to the admission of the petitioner. Immediately on passing of the order by District Registrar, Cooperative Societies, Ahmedabad, first and foremost step of the petitioner would have been to deliver the record of the Society to the office bearers of the Society.

#. Special Civil Application No.4454 of 1986 was admitted by this court on 30th September, 1987. For the reasons recorded in the order, this court has declined to grant interim relief in favour of petitioner. The order of this court of the date aforesaid reads as under:

Rule.

Heard the parties with regard to interim relief.

For the following reasons the interim relief is refused:

The challenge to the order annexure-D dated June

3, 1989 is a stale one, while in respect of challenge to the other orders the petitioners have lost before all the three authorities exercising powers under the relevant provisions of the Gujarat Cooperative Societies Act. However, on account of certain technical contentions raised in the petition, the petition is required to be admitted. In the facts and circumstances of the case I do not think that any prejudice will be caused to the petitioners if the petitioners hand over the records as directed by the Registrar in his order annexure-A dated April 5, 1982. It is also directed that further proceedings of criminal case No.2621 of 1982 pending in the court of Metropolitan Magistrate, Ahmedabad, may proceed upto the stage of pronouncement of judgment and order. However, the judgment and order that may be delivered shall be communicated to this court immediately and shall not be implemented without the permission of this Court.

#. If we go by this order, it also no more remains in doubt that the record of the Society was with him. This order has been passed in presence of the advocate of the petitioner and in case the record of the Society would not have been with the petitioner, this fact would have been brought to the notice of the court then and there. The petitioner has not handed over as what this court has expected from him, the record of the Society to the office bearers of the Society. The matter has been decided against the petitioner way back in the year 1982 and all the three authorities have decided the matter against him, but the record of the Society has not been given by the petitioner. Not only this, a criminal case has also been registered against the petitioner but still he has not bothered and he kept the record with him. I fail to see once the petitioner who had been the Secretary of the Society was not elected as its office bearer, any justification in his act to retain the record. Serious allegations are made during the course of arguments by the learned counsel for the respondents that the record was not given by petitioner deliberately. As the Secretary of the Society, what it is contended, he made bungling and Society's money has been misapplied or possibly misappropriated also. Though it is not the matter here to go into and to make investigation or inquiry therein but prima-facie, I find some justification in this contention of the learned counsel

for the respondents. If the petitioner would have been a fair and honest Secretary, and acted ethically while managing the affairs of the Society, there could not have been any objection, hitch or reason to withhold this record. A fair, honest and ethical member of the Society who has associated with it as an office bearer of the managing committee as a Secretary on his being lost in the election, should have voluntarily handed over the possession of the record of the Society to its office bearer. The petitioner, instead of doing it voluntarily, even after the orders have been passed under Section 75 and 83 of the Act, 1961, has instead of delivering possession of record to the office bearer of the Society, has taken up the matter before the higher authorities and also filed civil suit in the City Civil Court, Ahmedabad.

#. The petitioner though has no concern with the Society as office bearer of its managing committee, and though the Society has not passed any resolution to file special civil application No.4454 of 1986, still he joined the Society as petitioner No.1 originally. I fail to see what objection the Society could have against this order of the District Registrar, Cooperative Societies, Ahmedabad. How the Society is concerned with this order. To project the picture as if the Society itself is aggrieved of this order, he has deliberately and purposely without having any authorization to do so, impleaded the Society as petitioner No.1. Impleadment of the Society as petitioner in this petition has been taken to be serious by the court and ultimately it has been transposed as respondent.

##. In the first petition, the petitioner is challenging the orders of the District Registrar, Cooperative Societies, Ahmedabad City dated 3.6.82 passed under Section 75 and 83 of the Cooperative Societies Act, 1961, which has been confirmed by the Registrar of Cooperative Societies in revision and ultimately its order has been confirmed in appeal by the State Government. The petitioner is also challenging the order of the District Registrar, Cooperative Societies, dated 3.6.78 under which he was disqualified to become a member of the Managing Committee of the Society. All these three orders are challenged in this special civil application. Under the orders aforesaid, the petitioner was directed to hand over the record of the Society to the office bearers of the Society. In the second petition, the petitioner is challenging the notice and resolution of the Society whereunder the petitioner was expunged from the membership of the Society and the order of the District Registrar, Cooperative Societies, Ahmedabad, confirming the aforesaid action of the Society and the

order which has been passed by the appellate authority and the revision authority confirming the initial order of the District Registrar, Cooperative Societies, Ahmedabad.

##. In both these special civil applications, reply affidavits have been filed. The petitioner has not filed any rejoinder to the reply affidavits and as a result thereof, whatever factual averments made in these replies by the respondent-Society are to be taken to be uncontroverted.

##. To decide these two matters, the facts are to be briefly stated which are as under:

Uttar Bhartiya Nagar Cooperative Housing Society Limited, Ahmedabad, is a Cooperative housing Society registered under the Act of 1961 and its Registration no. is GH-3283. The petitioner, at the relevant time was managing the affairs of the Society as a Secretary. One Shri Jogeshwarprasad R. Sharma, since deceased, was the Chairman of the Society. The petitioner and its chairman were ordered to be disqualified as members of the managing committee of the Society under the order dated 3.6.78. I may pause here and state that this order of the District Registrar, Cooperative Societies, Ahmedabad, was not challenged by the petitioner before the appropriate authority nor before the State Government. However, in this writ petition it is challenged after a long delay. This order has been passed on the ground that the petitioner has failed to call Special Annual General Meeting of the Society as required under Section 78(1) of the Act, 1961. It is the case of petitioner that the said meeting was called on 25th August, 1977 and as that meeting was non coram as per the bye-laws the same was held on 1st September 1977 in which not only accounts for the year 1976-77 were approved and 1/3rd members of the managing committee that retired were reelected. In this meeting, as per the case of petitioner, he and Shri Jogeshwarprasad Sharma, since deceased, were reelected as members of the managing committee and the managing committee elected him as the Secretary and to Shri Sharma as the Chairman. It is the case of petitioner that after meeting of 25th August, 1977, the Society received requisition for holding Special General Meeting dated 8th August, 1977, and Special General Meeting was called on 7th September 1977 but the meeting was dissolved as it was non coram. Another requisition dated 18th December 1977 was received. The requisitionists were informed that most of them are defaulters as dues of the Society were not paid



by them and they were instructed to pay up the arrears and in the meeting of the managing committee, it was decided to suspend the rights of their membership till they pay the amount of arrears and they were also informed that they are in arrears they cannot exercise the rights of members as provided under the bye-laws and as such, they had no right to requisition the meeting. I may pause here again and submit that this conduct of the petitioner is clearly an attempt to usurp the power, management and control of the Society. The order dated 3rd June 1978 is challenged on manifold grounds. The petitioner has come up with the case that on 5.2.78, Special General Meeting of the Society was held which was illegal and the members elected therein of the managing committee are not legally elected members. The District Registrar, Cooperative Societies on 5-4-78 ordered that the petitioner to hand over the record of the Society to the newly elected members. The District Registrar, Cooperative Societies, Ahmedabad, further ordered on 5.4.82 for seizure of record of the Society purporting to act under Section 78 and 83 of the Act, 1961 against the petitioner and the Chairman, Shri Sharma. This order has been passed with reference to the meeting held on 5th September 1978 and the order dated 3.6.78. The petitioner submits that both these orders are illegal and suffer from manifold infirmities. These orders were challenged by petitioner by filing revision application before the Registrar which came to be rejected under the order dated 28th August 1984. Then matter was taken up in appeal before the State Government and the appeal was also dismissed on 7th May 1985. Hence this special civil application.

##. In the special civil application reference has been made by petitioner to the proceedings which has been initiated by respondents No.4, 5 by filing Arbitration Suit No.390 of 1985, and No.936 of 1984 before the Nominees of the Registrar. These suits have been filed against the petitioner and late Shri Sharma, the Chairman, wherein prayer has been made for permanent injunction restraining the petitioner from managing the affairs of the Society as the Society's office bearers and restraining from calling himself to be the office bearer of the Society. In this suit, application has also been filed for grant of temporary injunction and the same has been granted against the petitioner. Reference has to be made to the Regular Civil Suit No.5174 of 1984 filed by petitioner in the City Civil Court, Ahmedabad, against respondent No.4 and 5 for declaration that respondents No.4 and 5 are not the members of the petitioner-Society and they should be restrained from

calling themselves the office bearers of the Society and they should be restrained from acting as members or office bearers of the Society and seeking permanent injunction restraining them from intervening with or disturbing the petitioner and Shri Sharma as office bearers of the Society and also for quashing and setting aside of the action of respondents No.4 and 5 either as member of the Society or as its office bearers by declaration of their actions to be illegal and void. Interim relief has been granted initially which has been reproduced in para-10 of the special civil application. However, the petitioner has not given out the date on which interim relief has been granted. This Special civil application has been filed by petitioner in this court on 4.11.85. The petitioner has not stated a very important fact in this special civil application that the interim relief granted by the City Civil Court, Ahmedabad, in civil suit filed by petitioner came to be vacated subsequently on 9th August, 1985, i.e. much earlier to the date of filing of this special civil application. This fact has very very conveniently been concealed by petitioner.

##. The Society has, on 12th October 1984, issued an agenda notice for holding general meeting of the Society on 4.11.84 and one of the item therein was of expulsion of the petitioner from the membership of the Society on the ground that he has not paid dues of the Society since long and he is keeping with him unauthorisedly the record of the Society. It is say of the petitioner that this notice was not served upon him. The petitioner then made reference to the notice of Society dated 23.10.84 under which he was given an opportunity to show cause against its proposed action of expulsion of his from the membership of the Society on the grounds of non payment of dues of Society's amounting to Rs.7232=50 and non handing over of the record of the Society. This notice was admittedly received by petitioner. He has sent a telegram and therein raised objection that the meeting is not legally been convened and the person who has called the meeting has no right to call the meeting. A written reply is also stated to be sent. Reference has been made to the Resolution of the Society dated 4.11.84 under which the petitioner was ordered to be removed from the membership of the Society. This resolution was sent for approval of the District Registrar, Cooperative Societies, Ahmedabad, who gave approval under its order dated 29th March 1986. A copy of this order is not produced on the record of the special civil application. Against this order, the petitioner preferred appeal to the Addl. Registrar, Cooperative Societies (Appeal),

Gandhinagar, which came to be rejected under its order dated 31st July 1986. The petitioner has taken up the matter in revision which has also been dismissed by the State Government under its order dated 21st April 1987. These orders and resolution of the Society are subject matter of challenge in special civil application No.4555 of 1993.

##. Both these special civil applications have been contested by respondent-Society by filing affidavits as said earlier.

##. Shri S.K.Jhaveri, learned counsel for petitioner in special civil application no.4454 of 1986 contended that all the three authorities have committed error of jurisdiction in passing of the order of seizure of record from the petitioner. Referring to the provisions of Section 75 of the Act, 1961, Shri Jhaveri contended that under this provision the Chairman of the Society could have only directed to hand over the record and for seizing of the record from him and not against the Secretary. It has next been contended that Section 83 is only a procedural provision and as such, by resorting to this provision no order could have also been passed against the petitioner. Lastly it has been contended that the record of the Society is not with the petitioner but it is with the chairman and he has colluded with respondents No.4 and 5.

##. Shri Jayant Patel, learned counsel for respondents No.4 and 5 contended that the petitioner was the only person with whom the record of the Society is to remain. In support of his contention, he made reference to the bye-law No.60(3) and 60(4) of the Society. A copy of these bye-laws has also been produced on the record of this special civil application as annexure-R1 along with the reply. It has next been contended that all the three authorities have concurrently held against the petitioner. When the petitioner was admittedly in possession of the record he has to hand over the same to the newly elected members of the managing committee of the Society and should not have raised all these technical objections. Otherwise also, Shri Patel contended that the matter is squarely covered under Section 75 read with Section 83 of the Act, 1961. In his submission it was not the case of the petitioner throughout the proceedings before the lower court and authorities that the record of the Society was not with him or that he has handed over the record to the chairman. He submitted being the Secretary, the petitioner has to maintain record and record is with him

which fact has also not been denied by him throughout the proceedings and he cannot be permitted to take somersault at this stage. In support of this contention, he read out the relevant bye-laws as well as affidavit in reply. Lastly it is contended that the petitioner has not come up with clean hands before this court. He has concealed the material fact from this court of vacation of interim relief granted earlier by the City Civil Court in the Civil Suit filed by him against respondents No.4 and 5. It has next been referred that the petitioner has not challenged the election of respondents No.4 and 45 which was held in special general meeting of the Society held under the directions of the District Registrar, Cooperative Societies, on 5.4.78. That decision has attained finality. Then he stated that the authorities below have not committed any illegality nor the orders are perverse and this court may not make any interference in the matter.

##. Shri S.M.Shah, learned counsel for the petitioner in second petition contended that Section 36 of the Act, 1961, is not attracted in the present case. In his submission, expulsion of the member of the Society could have been ordered only in cases where the acts of the members are found detrimental to the proper working of the Society. In his submission, the very basic ground for expulsion of the petitioner from membership is for the reason that the record of the Society was kept by him is sub judice in special civil application no.4554 of 1986 and secondly even if the record is not delivered and the dues of the Society are not paid to the Society, which cannot be taken to be an act of the petitioner which is detrimental to the proper working of the Society. However, on being asked by the court, learned counsel for the petitioner Shri Shah admitted that Rs.5000/= have been deposited by petitioner with the Society but as an abundant precaution and not as dues of the Society. The learned counsel for the petitioner on being asked by the court admits that in this case he is unable to say anything about the record of Society as it is the subject matter of special civil application No.4454 of 1986. He submits that in case ultimately that matter is decided against the petitioner, it may have effect on this special civil application.

##. Shri Patel, learned counsel for respondent-Society submits that non payment of dues of the Society is very serious thing and certainly it will be detrimental to the proper working of the Society. Similarly, in case the record of the Society is not delivered by the ex-Secretary, it is detrimental to the proper and smooth

working of the Society. Without past record, it is very very difficult for the new office bearers to smoothly and properly manage the Society. The power under Section 36 of the Act, 1961, has correctly been exercised by the Society and all the three authorities have approved that action of the Society also. Dues of the petitioner were to the extent of Rupees seven thousand and odd. This conduct of the petitioner otherwise also is sufficient for dismissal of this writ petition that he has not delivered possession of the record of the Society.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

##. Reply affidavit in special civil application No.4454 of 1986 has been filed by Society and a copy of the same has been given to the learned counsel for the petitioner on 6.9.99 and to his counsel in other petition on 4.9.99. The petitioner has not filed rejoinder to the reply affidavit and the averments made therein stand uncontroverted, and the same are to be taken to be admitted. In special civil application No.4555 of 1983, affidavit-in-reply has been filed but rejoinder to it has not been filed and as such, the averments made therein are also to be taken to be admitted by the petitioner.

##. In special civil application No.4555 of 1993, the petitioner in para-4 thereof has made reference to the fact that he filed Regular Civil Suit No.5174/84 in the City Civil Court at Ahmedabad against respondent - office bearer of the Society. In the special civil application No. 4454 of 1986 the petitioner has mentioned the fact of filing of this suit as well as grant of temporary injunction therein but he has not disclosed this fact that interim relief earlier granted has been vacated by the City Civil Court, Ahmedabad, before the date he came before this Court. In the second petition, which has been filed in the year 1993, the petitioner has also concealed all these facts, namely that in the civil suit, interim relief has been granted which has subsequently been vacated and against the order of the City Civil Court, the petitioner preferred Appeal From Order No.391 of 1985 before this court which came to be rejected on 12th December 1985. These are very material and relevant facts which very conveniently the petitioner has concealed from this court. The petitioner has not furnished any explanation whatsoever for non disclosure of these facts in these two petitions. Be that as it may, the petitioner has also failed to produce any material on record of the special civil application No.4454 of 1986 that Rs.7232=50 was not due of the

Society against him.

##. The petitioner was expelled from the membership of the Society on two grounds, namely, (i) he has not paid dues of Society amounting to Rs.7232=50 and (ii) that he has not handed over the record of the Society to the new office bearers of the Society. On the record of the special civil application No.4454 of 1986, the petitioner has not produced any material or record to show and establish, first, that not a single pie was outstanding as dues of the Society and second that the alleged dues of the Society have been paid by him. From the special civil application No.4454 of 1986, I find that the petitioner has paid Rs.5000/= to the Society towards the dues of the Society. In para-11 of the special civil application No.4555/93, the petitioner stated as under:

11. That in the said Revision application, the petitioner has not got full opportunity of being heard in the matter and in the matter of the said Revision application, it is factually admitted by the respondent Society that in fact, it has already received Rs.5000/= from the petitioner for the amount payable by him.

In reply to these averments, the respondents admitted that a cheque of Rs.5000/= was given by the petitioner, though now whatever contentions may be raised by learned counsel for the petitioner, but this was the amount which has been paid by petitioner towards the dues of the Society. In case the dues were not there then what for this amount is paid to the Society has not been explained. From this fact, it stands concluded that the ground given for expulsion of the petitioner from the member of the Society i.e. dues of the Society is not incorrect. In fact, the petitioner has, by paying of Rs.5000/= admitted that dues of the Society were there against the petitioner.

##. The learned counsel for the petitioner submitted that dues of the Society against the member are not been paid then this act of the member will not amount to an act detrimental to the proper working of the Society. It is difficult to accept. In case the amount of Society due against the member is not paid by him, certainly it is an act detrimental to the proper working of the Society. It is a housing Society and in case the dues of the Society is not paid by the members then it will be difficult for it to discharge its liability of payment of bills of contractors or some other of its liability which it owes to other persons. In case the bills are not

cleared the contractors will stop construction of the houses and as a result of which it will be detrimental to the proper functioning of the Society. The members who have paid the amount to the Society will also suffer as the construction work will be stopped. Moreover, I fail to see what justification a member does have to withhold the payment of dues of the Society. If the members start to withhold the payment of the dues of the Society the result may ultimately be of winding of the Society and I fail to see how it will not be detrimental to the proper functioning of the Society. Whatever contentions may be raised by the learned counsel for the petitioner, it is a different matter, but if we go by the facts of special civil application No.4454 of 1986, the petitioner himself has considered the non payment of dues by the members of the Society to be very serious. Here the reference may have to the facts which the petitioner himself stated in the special civil application. The members of the Society have given requisition notice for calling of the special general meeting of the Society. This notice has been received by petitioner as Secretary of the Society. On this requisition the petitioner has not called special general meeting of the Society for which explanation furnished is that most of the requisitionists were defaulters as dues of the Society were not paid by them and they were instructed to pay up the arrears and in the meeting of the managing committee it was decided to suspend their rights of membership till they pay the dues of the Society. Dues of the members of the Society is a very very serious thing as per petitioner's own case and that too to the extent where the petitioner has not acted upon the requisition notice of the defaulters of calling special general meeting of the Society. The petitioner's case is that the managing committee had decided to suspend the right of membership of those members till they pay dues of the Society. So far as the dues of other members of the Society are concerned it was taken to be serious by the petitioner but where the petitioner's own turn came he has taken it to be very lightly. This approach of the petitioner is self-contradictory. The petitioner very conveniently has not mentioned the dates of the orders impugned in this petition either in the index or in the body of the special civil application as well as in the prayer clause also. The petitioner has given out that the copy of the order dated 21st April 1987 was not received by him earlier. He came to know about this decision in the year 1992 and then he got a copy of this order. In the reply to the special civil application the Society has given out that the order annexure-F dated 21st April, 1987 was passed by the State Government after hearing the learned

counsel for the petitioner. The counsel was present at the time of hearing of the revision application. He argued the matter. The orders are being communicated not to the party concerned but to the advocate of the party represented before the revision authority. Under the forwarding letter dated 1st May 1987 the State Government has forwarded a copy of the final order dated 21st April 1987 by registered post A.D. to the advocate of the petitioner Shri Naranbhai M. Patel and also to the counsel for the Society. It has further been stated that when the copy of the order was sent by registered post A.D. it must have been received by the advocate of the petitioner. Notice to the advocate of this order has to be taken to be notice of the order to the petitioner.

##. These facts have not been controverted by petitioner. The petition has been drafted or appears to have been drafted on 28th December 1992, but the affidavit was sworn on 12th March 1993 and the same has been presented in the court on or after 12th March 1993. Thereafter, the petitioner has not taken care of this matter for a considerable long period and first time, it appears to have been placed in the court on 10th August 1994. The petitioner in the special civil application has not disclosed the fact that a copy of the order was sent to the advocate. Not only this, it is not the case of the petitioner that this copy was not received by his advocate. It is also not the case of petitioner in the special civil application that though the advocate received the copy of this order of the State Government, the petitioner was not informed of the same. On the record of this special civil application the petitioner has not produced affidavit of the advocate. In these facts and circumstances, it has to be presumed and accepted that the copy of this order was sent to the advocate of the petitioner, it was received by the advocate and this fact has been informed by the advocate to the petitioner also. Delay itself may not be a ground for dismissal of the special civil application but where by this delay on the part of the petitioner, if it results in accruing of the rights to third party then it may be a good ground for dismissal of the special civil application. In the reply to the special civil application, the Society has given out further important relevant facts which are to be briefly noticed:-

From 23rd September, 1988, the petitioner ceased to be a member of the Society, i.e. the day on which the resolution of the Society expelling the petitioner from membership of the Society has been approved by the District Registrar, Cooperative Societies, Ahmedabad.



Pending proceedings before the District Registrar, Cooperative Societies, Ahmedabad, on 31st February 1986, one Bhagwan Shyamlal Pandit had submitted an application together with the application fees, etc. to enroll him as a member of the Society. As the matter was pending before the District Registrar, Cooperative Societies, Ahmedabad, the Society has kept that application fees in the reserve account and the application was also not considered. Here I may stated that as usual, the advocate of the Society has not cared to see that factual errors in the affidavit are being corrected. Be that as it may, after 29th March 1986, the petitioner has not taken any step to take appropriate interim relief against the operation and implementation of the order of District Registrar, Cooperative Societies, Ahmedabad, aforesaid and the Society, under the Resolution dated 6th April, 1986, has taken a decision of admitting Bhagwan S. Pandit as a member of the Society in place of the petitioner. Under the said resolution, the Society has further taken a decision to allot plot No.5 to Shri Bhagwan S. Pandit. Plot No.5 of the Society was originally allotted to the petitioner. The Society has stated as a fact on affidavit that Shri Bhagwan S Pandit has made construction of residential building on plot after getting approval of construction plan from the local authorities and he is staying, and occupying the said residential building since then. It is very specifically stated that the construction is made during the period 1992-93. The petitioner has not controverted these facts. It is difficult to accept that the petitioner would not have been in knowledge of these facts but still he has not taken any step against the resolution of the Society admitting Bhagwan S. Pandit as member or to implead Shri Bhagwan S. Pandit as a party in any of the litigations. A copy of the reply affidavit was received by petitioner on 24th August 1995 but these facts were not controverted. So by lapse of time, rights are being accrued to Shri Bhagwan S. Pandit who has been admitted as the member of the Society, plot has been allotted and he raised construction on the plot and he is residing and occupying the said plot. In view of these facts, now if any interference is made in this special civil application it will adversely affect right of Shri Bhagwan S. Pandit who is not a party before this court and serious prejudice will be caused to that person if any relief is granted to the petitioner.

##. The jurisdiction of this court under Article 226 of the Constitution of India is not only extra ordinary but an equitable jurisdiction and where because of delay in filing of the special civil application, right, title or

interest are being accrued in the property as well as the equities are also accrued in favour of third person, it may be a good and sufficient ground for dismissal of the special civil application. In case if ultimately this writ petition succeeds, plot no.5 which was allotted to the petitioner may also have to be restored to him by the Society and if it is so ordered, then naturally the third person to whom rights are being accrued in the plot and he raised construction and living therein will be subject to manifold prejudices. I find sufficient merits in the contention of the learned counsel for the respondent-Society that this writ petition i.e. special civil application No.4555/93 deserves to be dismissed on the ground of delay and laches. Otherwise also, the ground of not giving of record of the Society to the new committee is equally a good ground for expulsion of the petitioner from the membership of the Society. I am satisfied for the reasons to be stated in the later part of the judgment that the petitioner was in possession of the record and he has deliberately and wilfully not handed over the same to the new office bearers. So otherwise also, on this ground, the order of the authorities below and the action of the Society expelling the petitioner from membership of the society is legal and justified.

##. During the course of arguments, though the learned counsel for the petitioner raised contention that the record is not with the petitioner. I find sufficient merits in the contention of the learned counsel for the respondent Society that this is a somersault which has been taken by the petitioner, otherwise, it was his admitted case before the authorities below that the record is with the petitioner. The petitioner in the special civil application has nowhere stated that the record of the Society was not with him. It is not his case that this record was with chairman or that the record was with him but he has delivered the same to the chairman. In the special civil application, in substance, the petitioner has admitted that the record was with him. This court also while admitting the petition was satisfied that the record of the Society is with the petitioner which is clearly borne out from its order dated 30th September 1987, reproduced in the earlier part of this judgment. The chairman of the Society has filed affidavit before the lower authorities that the record of the Society is with the petitioner. That affidavit has not been controverted by the petitioner. The matter does not rest here. In case, the record of the Society was not with the petitioner, I fail to see what for a prayer has been made in Regular Civil

Suit No.517 of 1984 for injunction against respondents No.4 and 5 to restrain them from taking over property and/or record of the Society from the petitioner. Not only this, further prayer has been made for restraining them from disturbing or interfering in any manner with the possession of the record and lands and other property of the Society. Then comes the averment made by petitioner in para-14 of the special civil application No.4454/86 and I cannot do better than to reproduce the same here:

"It is submitted that the seizure under Section 83 cannot be invoked in the present case as there is no allegation about tampering with or destroying records or any other property and in view of that order cannot be passed under Section 83. The other provisions of Section 83 are held to be ultra vires and violative of fundamental rights under the law. Hence the provisions of Section 83 are wrongly invoked and that the order that came to be passed is liable to be quashed and set aside."

##. From these facts, coupled with the fact that it is not the case of the petitioner before this court that record is not with him, it is to be accepted that the petitioner was in possession of the record of the Society and he has deliberately and purposely not delivered to the new members of the Society. In fact, the order has been passed against the petitioner for his expulsion from the membership of the managing committee of the Society on 3.6.78. Thereafter he is claiming himself to be the member of the managing committee, which is clearly borne out from the litigation which is taken and the interim order which has been passed by the City Civil Court, Ahmedabad, in Regular Civil Suit No.5774 of 1984, now how it can be taken that the record was not with the petitioner. Bye-law No.60 and particularly clauses 3 and 4 thereof of the Society are very clear and specific and record is to remain with the Secretary of the Society and being the Secretary of the Society, the petitioner was in possession thereof. This bye-law has not been controverted by petitioner by filing rejoinder to the reply. The translation of this bye-law reads as under:

60. Secretary: Committee should appoint a Secretary to discharge the following functions:

... ..

(3) The documents and other papers of the Society

will remain in his custody and he will maintain the accounts as may be prescribed by the committee.

- (4) He will maintain the registers pertaining to shares, debentures and loan-stock of the members, and the registers as may be prescribed to be maintained under the bye-laws of the Society, books pertaining to deposits, and shall recover all such funds, penalties and other recoveries outstanding from the members of the Society and shall make disbursement under the orders of the committee and shall maintain the accounts.

##. A copy of the order of the City Civil Court, Ahmedabad, below Notice of Motion ex.6 in Regular Civil Suit No.5774 of 1984 dated 9th August 1985 under which interim relief has been vacated is also very clear and therefrom I also find that prima-facie the civil court has accepted that the record of the Society is with the petitioner. The advocate Shri Ramanlal Patel on behalf of Shri Jogeshwar Sharma in his notice to the Society has clearly stated that the record of the Society remains with the Secretary of the Society, i.e. with the petitioner. Shri Jogeshwar Sharma in the proceedings before the District Registrar, Cooperative Societies on 27th September 1985 filed an affidavit in which it is stated that the petitioner was the Secretary of the Society and all the record of the Society remain with him in his capacity as Secretary of the Society. In the year 1986, when the petitioner preferred revision application before the State Government against the order dated 21.2.86 of the District Registrar Cooperative Societies, Ahmedabad and 31st July 1986 of the Addl. Registrar, Cooperative Societies, Gandhinagar, under which he was expelled from the membership of the Society, in the memo of revision application he himself has admitted and stated that he is the Secretary of the Society and he is in physical and lawful record of the Society and audit of the same is being done every year. It has further been stated that these facts have not been considered by the learned authority below. A copy of this memo of revision application is there on the record of the special civil application No.4555/93 as annexure-D and para-(A14) thereof reads as under:

- (A14) That the applicant herein is the Secretary of the Society and is having the lawful record of the Society and its audit is made every year. The learned authorities below have disregarded these facts.

##. During the course of arguments in Appeal No.59 of 1986 before the Addl. Registrar, Cooperative Societies (Appeal), Gandhinagar, the advocate for the petitioner has raised the contention that in the year 1982, the order was passed for handing over the record because the petitioner was working as the Secretary of the Society prior thereto. It has further been contended that since the persons to whom record was ordered to be given were not the correct members therefore the record was not handed over by petitioner and appeal was preferred against the same.

##. The petitioner, in Regular Civil Suit No.5174 of 1984 filed in the City Civil Court, Ahmedabad, in para-4 stated that the plaintiff No.2 and 3 are the main office bearers of the Society and in their capacity as the office bearers of the Society, they are managing the affairs of the Society and therefore, the record of the Society was and is in the possession and custody of the plaintiff No.2 and 3, i.e. the petitioner herein. This application is verified on oath by the petitioner.

##. In the revision application No.302 of 1983, copy of which is annexure-D on the file of special civil application No.4555 of 1993, it is stated by petitioner that if there is any fear for destroying of the records, he is prepared to produce such record before the competent authority and for the said purpose affidavit has also been produced. So from this documentary evidence, it is clear that the petitioner is in possession of the record of the Society, he has deliberately and purposely not delivered that record to the respondents No.4 and 5 and unnecessarily dragged these respondents No.4 and 5 in the litigation. It is unfortunate that petitioner being member of the Cooperative Society, instead of acting in a manner to usurp and control and manage the Society, should have acted in the interest of the Society itself and to see that his act may not be detrimental to the proper functioning of the Society, he should have voluntarily handed over this record rather than to drag these persons in litigation. The petitioner has acted, behaved and continues with these acts which are clearly detrimental to the proper functioning of the Society as well as the purpose and object for which these Cooperative housing societies are being registered. I fail to see what prejudice would have been caused to him in case the record is delivered unless he has done bungling or misappropriation and falsification of the account books etc. By retaining the record, he will not be taken to be

the Secretary of the Society. The contention of the learned counsel for the petitioner that the record is not with the petitioner rightly as submitted by learned counsel for the respondent-Society is not correct. It was not his case before the lower authorities and in fact he has admitted throughout the proceedings that he is in possession of the record. Otherwise also, if we go by the bye-laws, he is the person who has to be in possession of the record. This writ petition is admitted only as this Court has considered that some technical contention has been raised. Substance of the matter has to be considered and not the technical contention to be raised. Substance is that the petitioner is in possession of the record of the Society and after his expulsion as a member of the managing committee as well as the member of the Society, he has no right whatsoever to retain the record and only on the basis of technical ground sought to be raised by learned counsel for the petitioner, no relief can be granted in his favour. What right he has to retain record of the Society in these facts of the case. Section 75 and 83 of the Act, 1961, if are to be read, taken and considered in the way and the manner in which it is sought to be projected, contended and argued by the two counsel for the petitioner, then what the court will do is that it will perpetuate illegality and permit the petitioner to retain the record for which he has no legal right to retain. Leaving apart the question whether the record has to be kept by the petitioner of the Society or the chairman, it is in the possession of the petitioner and when it is in possession of the petitioner, he has legal obligation to voluntarily give this record to the next management committee or where he has any doubt in any of the eventualities in the facts of the case, he should have delivered the same to the District Registrar, Cooperative Societies, Ahmedabad. The petitioner has not challenged the election of respondents No.4 and 5 as member of the management committee, then what right he has to retain record of the Society. Moreover, on 3rd June 1978 when he was expelled as member of the managing committee how far it is justified for him to retain record and to invite all these proceedings. If the petitioner really is a bonafide person, then being a member of the Society ethically, even if he has some grievance against respondent No.4 and 5, he should have handed over this record to the District Registrar, Cooperative Societies, Ahmedabad. Not only he retained the record, but despite having no authority, he got it audited also as per his own case. The petitioner has failed to furnish any cogent and justified reason, ground and explanation for retention of this record even after when the first order

has been passed by the District Registrar, Cooperative Societies, Ahmedabad, against him under Sections 75 and Section 83 of the Act, 1961. This conduct of the petitioner itself is sufficient for dismissal of these writ petitions.

##. As a result of aforesaid discussion, the authorities below have not committed any error, much less, a jurisdictional error or illegality in exercising of jurisdiction or the orders of the authorities are not perverse or arbitrary which call for interference of this court under Article 226 or 227 of the Constitution. In the result, these writ petitions fail and the same are dismissed. Rule in both the special civil applications is discharged. Interim relief, if any, granted in any of these petitions is vacated. The petitioner is directed to pay Rs.2,000/= each as costs of these writ petitions to the Society.

.....

[sunil]